

BRAD D. BRIAN (State Bar No. 079001)
Brad.Brian@mto.com
RICHARD E. DROOYAN (State Bar No. 065672)
Richard.Drooyan@mto.com
LAURA D. SMOLOWE (State Bar No. 263012)
Laura.Smolowe@mto.com
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
Thirty-Fifth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

Attorneys for Defendants
Robert A. Siravo and Thomas E. Swedberg

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATIONAL CREDIT UNION
ADMINISTRATION BOARD AS
CONSERVATOR FOR WESTERN
CORPORATE FEDERAL CREDIT
UNION,

Plaintiff,

vs.

ROBERT A. SIRAVO, TODD M.
LANE, ROBERT J. BURRELL,
THOMAS E. SWEDBERG,
TIMOTHY T. SIDLEY, ROBERT H.
HARVEY, JR., WILLIAM CHENEY,
GORDON DAMES, JAMES P.
JORDAN, TIMOTHY KRAMER,
ROBIN J. LENTZ, JOHN M. MERLO,
WARREN NAKAMURA, BRIAN
OSBERG, DAVID RHAMY and
SHARON UPDIKE,

Defendants.

CASE NO. CV10-01597 GW (MANx)

**DECLARATION OF THOMAS E.
SWEDBERG IN SUPPORT OF
MOTION TO DISMISS COUNTS 5
AND 6 OF THE SECOND
AMENDED COMPLAINT**

Judge: Honorable George Wu
Date: June 9, 2010
Time: 8:30 a.m.

DECLARATION OF THOMAS E. SWEDBERG

I, Thomas E. Swedberg, declare as follows:

1. I make this declaration of personal, firsthand knowledge, and if called upon and sworn as a witness, I could and would testify competently thereto. I submit this declaration in support of Defendant Swedberg and Defendant Siravo's Motion to Dismiss Counts Five and Six of the Second Amended Complaint.

2. In October 2007, I was Vice President of Strategic Planning and Organizational Development at Western Corporate Federal Credit Union ("WesCorp").

3. Attached hereto as Exhibit A is a true and correct copy of a PowerPoint Presentation, dated October 29, 2007, that I prepared and which I presented to Robert Siravo and John Merlo on or about October 19-22, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed April 13, 2011 at San Diego, California.



By: THOMAS E. SWEDBERG

Exhibit A

WesCorp's SERP

October 29, 2007

WesCorp's SERP

Senior Management (Not CEO)

- Developed in 2001 to retain and reward executives by providing non-qualified benefits to supplement qualified (DB) plan benefits
- Benefits paid by WesCorp, recovered through life insurance proceeds
- Primary benefit: Lump-sum SERP payment to generate a certain percentage of replacement income:
 - 70% for SVP, 65% for VP
 - Offset by DB, RSF, SSI payments
- Payment is present value of income stream over 20 years less offsets, plus tax gross-up of 40%

WesCorp's SERP

- Currently 6 Participants remain in SERP
 - Bob Burrell, David Trinder, Jeb Burbott, Dennis Toda, Tom Swedberg, and Tim Sidley
- In 2003 WesCorp implemented a non-qualified short term Deferred Incentive Plan for all other senior staff
 - 7.5% annual deferrals for VPs
 - 15.0% annual deferrals for SVP

WesCorp's SERP

- **CEO's SERP:**
 - Plan expected to provide income replacement at 48% inclusive of offsets for DB plan benefits, RSF, & SS
 - Plus 40% tax gross-up
 - Disability benefit: 6X
 - Death benefit: 3X

WesCorp's SERP

CEO's Plan Requires Modification

- SERP no longer produces 48 percent income replacement due to:
 - Compensation differences - SERP uses base salary, DB plan uses base salary plus bonus
 - DB plan benefits are limited to \$180k per year
- Although CEO's SERP benefit amount has increased with base salary, the SERP formula now produces a shortfall of 28%
- Current SERP lump-sum payment is \$4.863 million
- To achieve 48 percent replacement level, lump-sum payment should be \$6.214 million

Recommend amendment to SERP definition of compensation to reflect correct pay out amount.

WesCorp's SERP

Additional Item for Consideration

- Tax gross-up is currently 40%
 - Percentage was based on then current thinking
 - New plans from CUNA Mutual and ECS use 67%
 - Higher tax gross-up is more equitable

Consideration: amend SERP to reflect 67 percent tax gross-up amount.

WesCorp's SERP

Summary of Recommended Changes

Bob Siravo	Base Salary	Lump Sum @ 40% Gross Up	Base plus Bonus	Lump Sum @ 40% Gross Up	Lump Sum @ 67% Gross Up
	\$665,000	\$4,863 M	\$811,250	\$6,213 M	\$7,411 M
	Current SERP		Change #1		Change #2

With recommended changes, plan returns \$71.6 million to WesCorp – pays out \$18.4 million for all participants

WesCorp's SERP

Questions/Discussion